

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMMSCOPE TECHNOLOGIES LLC,
Petitioner,

v.

BELDEN INC.,
Patent Owner.

Case No. IPR2023-01061
Patent 6,998,537 B2

PATENT OWNER SUR-REPLY

Recognizing its Petition’s deficiencies, Petitioner now accuses Patent Owner (“PO”) of taking “inconsistent positions” on GmbH-866 and Yanagita—two non-English references Petitioner filed with new, certified translations in this IPR that ***substantively differ*** from the uncertified translations used in prior reexaminations. Petitioner is wrong.

A. PO’s Arguments Regarding GmbH-866 Are Not Inconsistent.

Petitioner ignores how PO’s statements in the prior terminated reexaminations were based on a ***substantively different and uncertified translation*** of GmbH-866 in EX-1057. Petitioner points to PO’s prior statements regarding “page 3, 3rd paragraph” of EX-1057 (marked p. 4 by Petitioner), but comparing the different translations of that paragraph demonstrates how the certified translation (EX-1010) supports PO’s position (*i.e.*, that GmbH-866 does not disclose twisted pairs):

Petitioner’s Certified Translation (EX-1010)	Reexam’s Uncertified Translation (EX-1057)	Substantive Difference Between Translations
“A data transfer cable . . . comprises four pairs 1, each consisting of two <i>isolated</i> , stranded copper conductors 2 or wires.” ¹ (marked p. 3)	“An invention-specific data transmission cable . . . has four pairs 1 of <i>insulated</i> , stranded copper conductors 2 or cants.” (marked p. 4)	“ <i>isolated</i> ” in the certified translation teaches that the conductors are not twisted together, as argued in the Preliminary Response (“POPR”) at 28-33.
“ <i>The stranding of the</i>	“ <i>The stranding of pair 1</i>	“stranding of <i>the pairs 1</i> ”

¹ All emphasis herein has been added unless otherwise noted.

Petitioner's Certified Translation (EX-1010)	Reexam's Uncertified Translation (EX-1057)	Substantive Difference Between Translations
<i>pairs 1</i> can consist in what is known as a helix stranding or in an SZ stranding (alternating, right-left stranding)." (marked p. 3)	can consist of a so-called helix stranding or an SZ stranding (alternating right-left stranding) .[sic]" (marked p. 4)	(plural) in the certified translation teaches collective stranding of the pairs together rather than stranding a single pair, as argued in IPR2023-01062 Paper 6 at 45-48.

Tellingly, the Examiner eventually withdrew the rejection, recognizing that “the teachings in GmbH ’866 [in the uncertified translation (EX-1057)] . . . are ***unclear and confusing***.” EX-1006 at 11. The certified translation (EX-1010) resolved the ambiguity in the prior translation—GmbH-866 does not disclose twisted pairs.

B. PO's Arguments Regarding Yanagita Are Not Inconsistent.

First, a PO's choice to respond to certain Examiner arguments and not others in a prior terminated reexamination does not preclude PO from making arguments now or render its current arguments “inconsistent.” *Salazar v. Procter & Gamble Co.*, 414 F.3d 1342, 1347 (Fed. Cir. 2005) (finding silence during prosecution is not acquiescence). Second, like with GmbH-866, the Petition uses a new, certified translation of Yanagita (EX-1012) that ***substantively differs*** from the uncertified translation used in the prior reexamination (EX-1055). (POPR at 18, n.7.) PO and its expert again confirmed that the correct certified translation of Yanagita—on which the Petition is based—does not disclose twisted pairs. (POPR at 17-26.)

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing **PATENT OWNER SUR-REPLY** was served pursuant to 37 C.F.R. § 42.6(e) via electronic mail on November 7, 2023, on the following:

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